IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.200 OF 2006

Sakharam Baburao Kahnvilkar ...Appellant
Vs.
Nandan Krishnaji Nimkar ...Respondent

Ms Sapna Samant i/by Mr H.S. Shreepad Murthy for the Appellant.
None for the Respondent.

CORAM : A. S. OKA, J.
DATE : APRIL 04, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellant. The Appellant is the original Defendant. The Respondent-Plaintiff filed a suit for eviction against the Appellant. The case of the Respondent is that the Appellant is a tenant in respect of the suit premises. According to the Respondent by the notice issued under section 106 of the Transfer of Property Act, 1882, the tenancy of the Appellant was terminated. The Trial Court dismissed the suit. In an Appeal preferred by the Appellant, the Appellate Court has passed a decree for possession.

2. The learned Advocate appearing for the Appellant submitted that on plain reading of the

plaint the suit was filed by the Respondent under the provisions of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as the said Act) as he has pleaded existence of the grounds under section 16 of the said Act. She submitted that as the Appellant had protection of the said Act, decree for eviction could not have been passed unless the grounds as contemplated by Section 16 of the said Act were proved by the Respondent by leading evidence.

3. I have considered the submissions. In paragraph No.16 of the Judgment, the Appellate Court has recorded a finding that the provisions of the said Act of 1999 were not applicable to the village in which the suit premises are located. On plain reading of the provisions of the said Act, the said finding cannot be faulted with. Then the only question which remains is whether there is a termination of tenancy by issuing a valid notice under section 106 of the Transfer of Property Act, 1882.

4. In the present case, the notice is dated 07th March, 2001 which was duly received by the Appellant

on 08th March, 2001. In view of the amendment made to the said Act of 1882 by the Transfer of Property (Amendment) Act, 2002, no fault can be found with the notice of termination. Once it is held that the Appellant is not protected by the Rent Control legislation, it was not necessary for the Respondent to prove existence of any ground under the said Act for eviction. In view of this position, I find no merit in the Second Appeal and the same is dismissed with no orders as to costs.

5. At this stage, the learned Advocate appearing for the Appellant submitted that the Appellant is occupying the suit house and therefore, longer time to vacate the suit house may be granted. Considering the age of the Appellant the said request is reasonable. Hence, it is directed that notwithstanding the dismissal of the Second Appeal, the decree for possession shall not be executed till 04th April, 2007 subject to condition of the Appellant filing a usual undertaking to vacate the suit premises within a period of three weeks from today. The Appellant will file his own undertaking alongwith undertaking of the

adult members of his family within the period of three weeks from today. The undertakings are to be filed in this Court.

6 If undertakings are not filed within stipulated period of three weeks, the decree will become executable forthwith.

. Parties and concerned court to act upon an authenticated copy of this order.

JUDGE